

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YULIA TYMOSHENKO, SCOTT SNIZEK,  
CHRISTY GREGORY RULLIS, and JOHN  
DOES 1 through 50, *On Behalf of Themselves  
and All Those Similarly Situated*,

Plaintiffs,

11-CV-2794 (KMW)  
**OPINION AND ORDER**

-against-

DMYTRO FIRTASH, et al.,

Defendants.

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KIMBA M. WOOD, District Judge:

Plaintiff Yulia Tymoshenko, former Prime Minister of Ukraine, and Plaintiffs Scott Snizek and Christy Gregory Rullis have filed a Third Amended Complaint (“TAC”) against Ukrainian businessman Dmytro Firtash, several Ukrainian associates, and a number of U.S. individuals and corporations alleging that Defendants’ conduct violated the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961–1968, as well as state law.

Several U.S. Defendant corporations and citizens have moved to dismiss the TAC with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). For the reasons set forth below, the Court GRANTS the motion to dismiss the TAC and DENIES Plaintiffs leave to amend their complaint for a fourth time.

**I. BACKGROUND**

What follows is an abbreviated summary of the history of the case and the factual background. A more detailed discussion of this background can be found in *Tymoshenko v. Firtash*, 57 F. Supp. 3d 311, 314–319 (S.D.N.Y. 2014) (Wood, J.) (“*Tymoshenko II*”).

A. *Relevant Procedural History*

In December 2011, Plaintiff Tymoshenko filed the Amended Complaint (“AC”) in this action, asserting claims against Dmytro Firtash and his associates under RICO, the Alien Tort Statute, 28 U.S.C. § 1350, and various state laws. *See* [Dkt. No. 23]. The AC alleged that Firtash and his co-Defendants had induced Ukrainian officials to unlawfully prosecute and detain Tymoshenko and her political allies in retaliation for their political opposition to Firtash’s interests. *See* AC ¶¶ 15, 93–94, 160–62, 279. In March 2013, the Court dismissed the RICO claims as impermissibly extraterritorial, based on the prevailing legal framework at the time, because the enterprise and pattern of racketeering activity described in the AC were predominantly foreign. *See Tymoshenko v. Firtash*, No. 11-CV-2794, 2013 WL 1234821 (S.D.N.Y. Mar. 26, 2013) (Wood, J.).

Tymoshenko asserted a revised RICO claim in the Second Amended Complaint (“SAC”) in November 2013, adding U.S.-based Plaintiffs Scott Snizek and Christy Gregory Rullis, and alleging that the Defendants’ racketeering enterprise was domestic and therefore fell within RICO’s territorial scope as then understood. *See* [Dkt. No 87]. In September of last year, the Court dismissed the SAC on the grounds that Plaintiffs failed to adequately plead predicate acts of wire fraud, mail fraud, or money laundering necessary to support a RICO claim. *Tymoshenko II*, 57 F. Supp. 3d at 319. However, the Court granted leave for Plaintiffs to amend their complaint in light of *European Community v. RJR Nabisco, Inc.*, 764 F.3d 149 (2d Cir. 2014), which was decided after the briefs had been filed and which changed the framework for applying RICO extraterritorially.<sup>1</sup>

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<sup>1</sup> Because *Tymoshenko II* was decided based on Plaintiffs’ failure to plead predicate acts, the Court did not reach the issue of extraterritoriality. 57 F. Supp. 3d at 319.

Plaintiffs then filed their Third Amended Complaint (“TAC”) in November of last year, again alleging violations of both RICO and state law. *See* [Dkt. No. 120]. The TAC asserts largely the same claims as the SAC, although Plaintiffs have added several new Defendants and have reframed their allegations regarding the purpose of the alleged racketeering enterprise. *See id.* ¶¶ 4, 17–21, 34. In response, U.S. Defendants Paul J. Manafort; Barbara Ann Holdings, LLC; CMZ Ventures, LLC; The Dynamic Group; Brad S. Zackson; and Vulcan Properties, Inc. (collectively, “the Moving Defendants”) have filed motions to dismiss the TAC with prejudice.<sup>2</sup> *See* [Dkt. No 121] (Manafort, et al.); [Dkt. No. 124] (Vulcan).

### *B. Factual Allegations*

What follows is a summary of the factual allegations asserted in the TAC. These allegations closely parallel those in the SAC. They are accepted as true for purposes of the Moving Defendants’ motions to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Defendant Dmytro Firtash is the owner of a Ukrainian energy company, RosUkrEnerg (“RUE”). TAC ¶ 3. From 2004 to 2009, RUE earned millions of dollars by serving as a “middleman” in natural gas contracts between Naftogaz—a Ukrainian state-owned gas company—and Gazprom—a Russian gas company that is also partially state-owned. *Id.* RUE was able to obtain this lucrative position by virtue of Firtash’s close relationship with Ukrainian government officials. *Id.* In December 2007, Plaintiff Yulia Tymoshenko became Ukraine’s Prime Minister. *Id.* ¶ 10. Over the following two years, she took steps to exclude RUE from natural gas transactions between Ukraine and Russia, culminating in her negotiation of new

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<sup>2</sup> Vulcan filed a separate motion to dismiss “based on the reasons . . . fully set forth” by the other Moving Defendants, Mot. Dismiss (Vulcan) [Dkt. No. 124] at 1, and which “join[ed], adopt[ed], and incorporate[d] the arguments” made in the Manafort Defendants’ motion, Mem. of Law in Supp. (Vulcan) [Dkt. No. 125] at 3. Therefore the Court considers the motions together.

natural gas contracts with Russia in 2009 that entirely eliminated RUE as an intermediary. *See id.* ¶ 112.

In 2010, Viktor Yanukovych—an ally of Firtash—narrowly defeated Tymoshenko to become President of Ukraine, and Tymoshenko resigned as Prime Minister. *Id.* ¶ 41. The Yanukovych administration then began a campaign targeting Tymoshenko and her political allies with unfounded and malicious prosecutions that resulted in her imprisonment. *Id.* ¶¶ 4, 43.

Plaintiffs allege that this campaign against Tymoshenko was funded by a U.S.-based racketeering enterprise (“the Enterprise”) that was orchestrated by Firtash but that included members of the Yanukovych administration, Ukraine-based individuals and companies controlled by Firtash, and a number of U.S.-based corporations and U.S. citizens. *See id.* ¶ 65. According to Plaintiffs, Firtash and his associates funneled money generated through unlawful “skimming” of natural gas transactions between the Ukraine and Russia to corporations based in the U.S., under the guise of legitimate real estate transactions that the Defendants in fact had no interest in pursuing. *See id.* ¶ 27. Defendants then funneled this money back to the Ukraine “through the labyrinth of Firtash . . . companies and bank accounts located in Europe, Cyprus, Panama, and elsewhere” so as to generate “virtually untraceable funds” that could be used to pay Ukrainian prosecutors and others within the Yanukovych administration. *Id.* ¶¶ 4, 10, 15, 22–23, 27, 35.

Plaintiffs also allege that an additional purpose of the Enterprise was to defraud several groups of U.S. plaintiffs: (1) Plaintiffs Scott Snizek and Christy Gregory Rullis, who are former employees of U.S. defendant corporations allegedly participating in the Enterprise and were denied promised wages and other benefits, *id.* ¶¶ 11, 97, 150; (2) John Doe U.S. Plaintiffs who were owners or developers of real estate holdings in which the Enterprise feigned serious

interest, and who lost valuable time and money as a result of this deception, *id.* ¶¶ 13, 27, 148; and (3) John Doe U.S. Plaintiffs to whom the Enterprise marketed Ukrainian real estate opportunities at “grossly inflated” prices, *id.* ¶¶ 13, 150.

The TAC also incorporates new allegations relating to “recent developments,” none of which appear to be relevant to either their RICO or state law claims. Specifically, Plaintiffs allege that an “independent” investigation conducted by Skadden Arps into the prosecution of Tymoshenko by the Yanukovich administration was in fact “orchestrate[d] and coordinate[d]” by Defendant Paul Manafort, TAC ¶ 127, and that the Yanukovich administration intentionally underestimated their payment to Skadden for the investigation in order to avoid application of a Ukrainian anti-corruption law. *Id.* ¶ 129. The TAC has also added allegations describing separate investigations and proceedings taking place in other U.S. jurisdictions that involve either Firtash or purported associates of other Defendants, but it alleges no connection between the schemes at issue in those proceedings and the scheme alleged here. *See id.* ¶¶ 133–36.

## II. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead facts sufficient “to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when the supporting factual allegations “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Where a plaintiff has failed to “nudge” a claim “across the line from conceivable to plausible,” a district court must dismiss the complaint. *Twombly*, 550 U.S. at 570.

The Court must accept as true all well-pleaded factual allegations in a complaint and “draw[] all inferences in the plaintiff’s favor.” *Allaire Corp. v. Okumus*, 433 F.3d 248, 249–50

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